

### REMARKS

This is in response to the Final Office Action mailed on November 24, 2008. Claims 1-11, 13-22, and 24-39 were pending in the application, and the Examiner rejected all claims. With this amendment, claims 1, 3-4, 22 and 36 are amended and claims 2 and 26-27 are canceled. All of the other claims remain unchanged in the application.

#### **Telephonic Interview**

On January 6, 2009, a telephonic interview was conducted between the Examiner and the undersigned attorney, with Kenneth Brandt from our office sitting in on the interview. During the course of the interview, the outstanding rejections and cited in the November 24, 2008 Final Office Action and proposed claim amendments to address the rejections were discussed. No agreement was reached, but the undersigned attorney thanks the Examiner for the courtesy of allowing the interview.

#### **Objections to the Specification**

The specification is objected to under 35 U.S.C. § 132(a) as allegedly containing new matter introduced in the last Amendment, filed on June 30, 2008. Applicants respectfully disagree with the objection, for the reasons discussed below with respect to the rejections under 35 U.S.C. §112. Withdrawal of the objection is respectfully requested.

#### **Claim Rejections – 35 U.S.C. § 112**

Claims 1, 22, 24-25 and 28 stand rejected under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the written description requirement. Specifically, the Office Action asserts that the specification does not support the recited feature of a “motorized” product.

Applicants respectfully traverse the rejection with respect to claim 1. The reason provided for the rejection is the use of the word “motorized”. However, claim 1 does not include

the word “motorized” and applicants respectfully submit that the application is otherwise in compliance with the written description requirement as it pertains to claim 1.

With respect to claims 22, 24-25, and 28, Applicants again respectfully traverse the rejection. The claims as written refer to a “motorized product moving machine.” In the specification, Applicants repeatedly describe the use of a forklift. One skilled in the art would appreciate that a forklift is a motorized product moving machine. It is well known that forklifts, in general, are motorized vehicles, although the Applicants admit that some product moving machines may have forks used for lifting material but are not, in fact, motorized. An example of such devices are hand trucks. The specification, though, distinguishes between hand trucks and forklifts on page 16. Thus, for the purposes of this application, one skilled in the art would appreciate that a forklift is a motorized product moving machine. Therefore, the Applicants submit that the specification does comply with the written description requirement as it relates to claims 22, 24-25, and 28. Withdrawal of the rejection is respectfully requested.

Claim 36 stands rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Claim 36 has been amended as suggested by the Office Action. Withdrawal of the rejection is respectfully requested.

**Claim Rejections – 35 U.S.C. § 103**

Claims 1-11, 13-21, 24, 26-39 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent Number 6,837,436 of Swartz et al. (hereinafter “Swartz”). Of these claims, claim 1 is an independent claim. Claim 1 has been amended to include the subject matter of claim 2, which is now cancelled.

As amended, claim 1 reads as follows:

A method of filling an order at a product moving device in a store, comprising:  
receiving a list, including at least one item, representative of the order at the  
product moving device;  
displaying the list to an operator on a display device;

placing an item on the list on the product moving device;  
detecting an item placed on the product moving device by receiving a signal from a tag on the item and identifying the item based on the received signal;  
reflecting detection of the item in the product moving device on the list; and  
electronically displaying, at the product moving device, a route within the store for the operator to travel with the product moving device to obtain all remaining items on the list.

(Emphasis Added.) Applicants respectfully submit that Swartz fails to teach or suggest all of the features recited in claim 1, especially, but not necessarily exclusively, those emphasized above. As a preliminary matter, Applicants once again point out that the Swartz reference has Figures that appear to be totally unrelated to the specification. Therefore, Applicants have attempted to understand the meaning of Swartz without the benefit of drawings. Regarding the features of detecting an item placed on the product moving device and by receiving a signal from a tag on the item and identifying the item based on the received signal, Applicant can find no teaching or suggestion of such features in the language cited in the Office Action regarding claim 1. The Office asserts that Swartz teaches “Means for updating list based on items placed on cart”. The apparent support for this assertion is apparently at column 2, lines 54-60 of Swartz. Applicants note that the Office Action states that the cited passage “discloses that when the items are collected, either by the customer or an attendant, the collector is provided with a portable hand-held terminal which displays the list of items to be collected.” However, Swartz actually reads “when the items are to be collected, either by the customer or an attendant, the collector is provided with a portable hand-held terminal which displays the list of items to be collected.”

Applicants submit that there is no teaching here in Swartz of a method that includes detecting an item placed on the product moving device. The Office Action appears to suggest, by stating that when the items are collected the terminal displays the list of items to (yet) be collected. Applicants admit that Swartz discusses loading a shopping list on a device, which is what the cited passage appears to teach. However, Applicants but respectfully submits that Swartz fails to provide any teaching of detecting an item placed on a product moving device. Merely providing a shopping list, even if it is on an electronic device and even if the list is downloaded from an order system is not a teaching of detecting an item placed on the product

moving device. The cited passages in Swartz simply do not teach such a feature. The Office Action suggests that the portable terminal may have a machine code reader (see Swatz, col. 4, ll. 58-67), which could be a “means” for recording selected items. However, claim 1 does not recite a means for recording selected items. It positively recites “detecting an item placed on the product moving device by receiving a signal from a tag on the item and identifying the item based on the received signal”. In fact, beginning at col. 5, ln. 66, the use of a machine code reader is used to retrieve information about the product. There is no suggestion of any detecting an item placed on a product moving device for the purpose.

Furthermore, Applicants submit that Swartz fails to teach or suggest “reflecting detection of the item in the product moving device on the list”. As discussed above, Applicants submit that Swartz fails to teach or suggest detecting of an item placed on a product moving device. It follows, then, that Swartz fails to teach detection of such an item. Applicants note that the Office Action provides no specific language to address this feature. Further, Applicants could find no teaching or suggestion, in review of the cited language in Swartz, of this recited feature.

In addition, Applicants submit that Swartz fails to teach or suggest “electronically displaying, at the product moving device, a route within the store for the operator to travel with the product moving device to obtain all remaining items on the list.” The plain meaning of the word “route” as defined by Merriam’s Online Dictionary, is “an established or selected course of travel”. In the specification, beginning on page 33, it is disclosed that the display provides directions to items in the store. Thus, Applicants submit that the feature recited here clearly means providing a route, i.e., a course of travel or directions. By contrast, Swartz merely discusses providing a general map of the store. Swartz does not appear to teach or suggest providing a route, or directions, through a store. For at least these reasons, applicant submits that Swartz fails to teach or suggest all of the features of claim 1 and that claim 1 and its dependent claims are allowable over Swartz.

Claims 26-27 have been canceled by this response, rendering their rejection moot. Claims 24 and 28-39 depend from independent claim 22, which does not stand rejected as unpatentable under Swartz. Therefore, the Applicants respectfully submit that claims 24 and 28-39 are allowable over the Swartz reference. Withdrawal of the rejection is respectfully requested.

Claims 22 and 25 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Swartz in view of U.S. Patent Number 7,020,494 of Spriestersbach et al (hereinafter “Spriestersbach”). Claim 22 is an independent claim. Claim 22 has been amended to include the subject matter of claims 26 and 27, now canceled. As amended, claim 22 reads as follows:

An order filling system comprising:

- a first computer system;
- a picklist containing a list of desired items to fill an order;
- a motorized product moving machine having a first reader disposed thereon, connected to the first computer system;
- a pallet having an identification tag, readable by the first reader on the motorized product moving machine, the identification tag storing a pallet identification in a form readable by the reader and data related to the order including the picklist, the pallet identification being associated with the order in the first computer system and wherein the identification tag is configured to read data from an item tag disposed on each of the items that is placed on the pallet;
- a display device connected to the motorized product moving machine configured to display the picklist; and
- wherein the picklist is generated at the first computer system and transmitted to the first reader on the motorized product moving machine.

(Emphasis added.) Applicants respectfully submit that claim 22 is allowable over the cited references for at least the reasons discussed below.

Claim 22 recites a pallet having an identification tag that is readable by the first reader. The identification tag stores not only a pallet identification, but also data related to the order, specifically including the picklist. The Office Action rejects the subject matter of dependent claim 26 for the same reasons provided by claim 1. However, there is no assertion in the Office Action that the combination of Swartz and Spriestersbach teaches or suggests a pallet

with an identification tag that stores data related to the order. Swartz appears to be primarily concerned with generating a list and Spriestersbach appears to teach identifying pallets, but neither provides any teaching or suggestion of an order filling system that has an identification tag on a pallet with information related to a picklist. Furthermore, neither reference provides any teaching or suggestion of an identification tag on a pallet, or anywhere else that is configured to read data from an item tag disposed on an item, much less items placed on a pallet. Thus, Applicants submit that claim 22 is allowable over the cited references. Furthermore, claim 25 is believed to be allowable based at least on its dependence on claim 22.

It is noted above that claims 24 and 26-39 depend from claim 22. As Applicants submit that claim 22 is allowable over the cited references, as discussed above, Applicants also respectfully submit that claims 24 and 26-39 are allowable based at least on their dependence on claim 22. Withdrawal of the rejection is respectfully requested.

**Summary**

Claims 1, 3-11, 13-22, 24-25, and 28-39 are pending. In view of the claim amendments and remarks above, Applicants respectfully submit that all of the pending claims are in condition for allowance. Entry of this Amendment, reconsideration, and Allowance are respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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